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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,709	12/21/2005	Achim Kraus	081276-1081-00	8170
23409 7590 06/08/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,709

Applicant(s)

KRAUS ET AL.

Examiner

Gary K. Graham

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,10,12-14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,10 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Initially it is noted that while applicant has changed the dependency of claim 12 from the previous version, he has not indicated such in the claim via strikethrough for deletions and underlining for additions. All changes must be so indicated.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 7 and 14, which ultimately depend from claim 1, set forth that the plate on the support is fastened via predetermined breaking elements while claim 1 has set forth a clip detachably connecting the bearing to the support. There does not appear a disclosed embodiment that collectively uses both a clip to couple the bearing to the support and predetermined breaking elements. Clarification is requested as to which embodiment uses such a combination of components.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Muchlpforte et al (US patent 5,878,631).

The patent to Muchlpforte discloses the invention as is claimed. Muchlpforte discloses a wiper device (fig. 15) comprising a support (1) on which a tubular bearing (3) is arranged within a receptacle or hole thereof. The bearing supports a wiper shaft (4). A retaining element, in speed nut or clip form (15), detachably connects the bearing to the support.

With respect to claim 1 and the limitation of “such that the bearing separates from the support in the event of an increased force on the wiper shaft due to impact with a pedestrian”, such appears purely functional and does not define any particular structure for the device that differentiates from Muchlpforte. It appears that the bearing of Muchlpforte would be capable of separation upon application of sufficient force to overcome the clip.

With respect to claims 6 and 13, note plate (14) that is fastened to a flat area of collar (22) on the support (1).

Claims 1-3, 5, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lisiecki (EP patent 0703128).

The patent to Lisiecki discloses the invention as is claimed. Lisiecki discloses a wiper device (figs. 4,5) comprising a support (10) on which a tubular bearing (14) is arranged within a receptacle or hole thereof. The bearing supports a wiper shaft (not shown but disclosed). A retaining element, in clip form (30), detachably connects the bearing to the support.

With respect to claim 1 and the limitation of “such that the bearing separates from the support in the event of an increased force on the wiper shaft due to impact with a pedestrian”, such appears purely functional and does not define any particular structure for the device that differentiates from Lisiecki. It appears that the bearing of Lisiecki would be capable of separation upon application of sufficient force to overcome the clip.

Allowable Subject Matter

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 02 March 2010 have been fully considered but they are not persuasive.

Applicant's argument that Muehlporte discloses support of a drive output shaft and not a wiper shaft is noted but not persuasive. Muehlporte discloses a wiper device. As such, the shaft (4) therein can reasonably be called a wiper shaft as it is part of the wiper device within a wiper system. It is noted that while the claim calls for a wiper shaft, such in no way defines a shaft that distinguishes from the shaft disclosed by Muehlporte. Merely calling the shaft a "wiper" shaft does not appear to impart any particular structure to the shaft. The claim appears limited to a shaft where any particular structure that may be coupled to such shaft does not distinguish the claim. It is noted that applicant is not claiming a wiper arm or other structure on the shaft, but merely the shaft.

Applicant's argument that neither Muehlporte or Lisiecki suggests a clip detachably connecting the bearing to the support such that the bearing separates from the support in the event of an increased force on the wiper shaft due to impact with a pedestrian is noted but not persuasive. As set forth above, such appears purely functional and does not define any particular structure for the device that differentiates from either the Muehlporte or Lisiecki clip. Since the clips of Muehlporte and Lisiecki are separate components and are attached to the bearing to retain such in the support, it appears such would be capable of separation upon application of sufficient force to overcome the clip. It is noted that applicant has not defined any particular force that would cause separation, only that the clip is detachable allowing separation of the bearing upon sufficient force on the shaft. Claims directed to an apparatus must distinguish from the prior art in terms of structure rather than function.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727

GKG
02 June 2010